IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

RAM PRATAP V/S MANSUKH & Ors.

S.B.CIVIL WRIT No. 4285 of 1990
UNDER ARTICLE 226 OF THE CONSTITUTION
OF INDIA.

Date of order : 17th January, 2007

PRESENT
HON'BLE SHRI N.P.GUPTA,J.

Dr. R.S. Dev Rajpurohit, for the petitioner.
Mr. Sudhir Sharma & Mr. R.S. Gill, for the respondents.

BY THE COURT:

This writ petition has been filed by the petitioner seeking to challenge the orders Annexure-11 and 14, and for restoration of the orders Annexure-9 and 10 (Annexure-9 is the judgment and Annexure-10 is the decree of the learned trial court).

The facts of the case are that the petitioner filed a suit under Section 88, 188 and 92A of the Rajasthan Tenancy Act in the Court of A.C.M. Nohar, on 12.10.78 against the two private defendants Mansukh Ram and Het Ram,

and third defendant being the State. Copy of the plaint has been produced as Annexure-3. This suit was contested by the defendant by filing written statement Annexure-4, which suit was decreed by the learned trial court vide judgment Annexure-9. Against this an appeal was filed which was allowed vide judgment dt. 12.9.1983, and this Annexure-11 was upheld in further appeal by the Board of Revenue vide judgment dt. 30.7.1990.Annexure-14

Since the writ seeks to challenge the judgment Annexures 11 and 14, and seeks restoration of the judgment of learned trial court being Annexure-9, I need not get lost in various other facts pleaded by the petitioner in the writ petition, which have not been pleaded in the plaint, and do not form part of the record of the trial court, Appellate Court, or the Revenue Board.

With the above background, the case of the plaintiff, as pleaded in the plaint is, that land of old Khasra No. 346 was continuing in possession of the petitioner's father since before Samvat Year 1990, and in Samvat 2005 the plaintiff was separated from his father, and the land was given over to him, and since then the plaintiff claims to be in continuous, peaceful and unobstructed possession thereof. Then, in para-2 it is pleaded that under the Bhakra Colonisation Land Settlement and Allotment Rules, 1955, the plaintiff had fulfilled all

conditions necessary for rendering him entitle to allotment, the plaintiff was adult, and was having independent family, and was having no other land, but due to political pressure the land was not allotted to the plaintiff, or his father, and was allotted to the defendants no. 1 and 2, while the plaintiff continued in possession. Then in Bhakra Kilabandi Operations, the name of the area got changed in Chak No. 25 SN Murabba No. 369/368, and 368/369, and various Killa as pleaded in para-3 of the plaint were allotted, and the authorities under the Colonisation Act illegally made permanent allotment of the land, which allotment was claimed to be void ab-initio. Then, it was pleaded that the defendants no. 1 and 2 initiated various revenue and criminal proceedings before Colonisation Authorities, and the Government, to take possession but all proceedings were dismissed, and the plaintiff's possession was upheld, even complaints were filed under Section 145 Cr.P.C. but the plaintiff's possession was upheld right upto High Court. It was then pleaded that on 27.4.76 the plaintiff was illegally arrested, and attempt was made to show the plaintiff to have been dispossessed. Thereafter on 22.7.1977 again despite showing the orders of the Sessions Court, the land was attached, and the proceedings were initiated for showing possession of the defendant, while vide order dt. 10.12.1965 the High Court had also declared the land to be in plaintiff's possession, and that the possession of the

plaintiff is duly established by Girdawari Jamabandi, Mal Receipt, and various documents pleaded in para-5 of the plaint. According to the plaintiff, the authorities of defendant no. 3 and defendants no. 1 and 2 are threatening to illegally dispossess him, which would cause irreparable loss. The plaintiff, therefore claimed to be, entitled to a declaration about the plaintiff being Khatedar Kashtkar, and to be eligible to have the land allotted on permanent basis, and is in adverse possession, qua the defendants no. 1 and 2, and that the plaintiff is also entitled to a declaration that the allotment made in favour of defendants no. 1 and 2 is illegal and void ab-initio against the plaintiff, and that the plaintiff is also entitled to an injunction in this regard. It was then alleged that the defendants were time and again asked to accept the contention of the petitioner, but they finally declined on 1.10.78. This was pleaded to be cause of action, and the suit was filed for above reliefs.

The private defendants filed written statement on 21.4.80 contesting the suit, and pleading that the plaintiff has nothing to do with the land in question. It was not in his possession. Then, it was pleaded that the plaintiff was not entitled to have the land allotted, and that this matter was finally decided by the learned Additional Commissioner, Bikaner Division, vide order dt. 23.1.1961, whereby it was found, that the plaintiff is not

entitled to any allotment, and thus the plaintiff's appeal was dismissed, and thereafter Colonisation authorities delivered the possession to the defendants. Then, it was pleaded that land has rightly and properly been allotted to the answering defendants, and the allotment is not in any manner influenced by any political pressure. It was also alleged that the writ filed by the plaintiff was dismissed on 6.9.78, and it was found that the possession has been delivered to the defendants, as is clear from the entry in Ghatna Bahi. According to the defendant, after the defendants were given possession, proceedings were initiated under Section 145, and the land was got attached. Allotment made in favour of the defendants was supported, and was claimed to be valid. It was also pleaded that in view of the judgment of the Additional Commissioner dt. 23.1.61, the plaintiff is not entitled to any allotment, nor is he entitled to any relief, and the suit was prayed to be dismissed.

The learned trial court in the judgment dt. 5.11.1981, Annexure-9, deciding issue no.1, which comprehended the question about the plaintiff's possession, and entitlement to allotment, considered, that in Ex.6 Girdawari of Samvat 2007 to 2012 name of Leena Thaold Khud Kasht Ram Pratap is entered. Then, in Girdawari of 2009 to 2012 cultivation of Ram Pratap is entered, and it was considered that Kalu Thalod was the grand father of the

plaintiff. This shows that the land is in possession since the time of plaintiff's grand father, and it was also considered that P.W.1 Ram Pratap himself had admitted, that he applied for allotment which application and subsequent appeal were all dismissed. Then, it was found that defendant has not produced any record, and no reasons have been shown as to why the judgment of the Additional Commissioner is not produced. Then, it was found that the litigation commenced on the land being allotted to the private defendants, but possession was not given to the defendants. Ultimately it was found, that since the plaintiff is in possession since Samvat 2007, and was in cultivatory possession since Samvat 1990, it should have been allotted to the plaintiff, and the Court has no right to go into the question as to why the land has not been allotted to the plaintiff. It was also held, that the defendant has also not shown in the written statement, or while in the witness box, as to why the plaintiff is not held entitled to allotment. Thus, it was concluded that the plaintiff is entitled to allotment of land. Thus, issue was decided in favour of the plaintiff. Then, deciding issue no. 2, which comprehended the question about illegality of the allotment to private defendants, it was held, that in issue no. 1 when it has been found that the plaintiff is entitled to allotment of land, and he has never been dispossessed, and thus it was concluded, that the allotment in favour of the defendant is contrary to law, and

ineffective qua the plaintiff. Consequently issue no. 3 was also decided in favour of the plaintiff, holding him entitled to injunction. Likewise issue no. 4 relating to plaintiff's entitlement to maintain the suit was also decided in favour of the plaintiff, and then issue no. 5 was decided against the defendant, by considering, that Girdawari shows plaintiff's possession. The plaintiff has also produced rent receipts, and it is not shown as to when Jamabandi of Samvat 2011 to 2014 was cancelled. Then, deciding issue no. 6 about non-joinder of parties, it was held, that the suit is not bad for non joinder. Then, issue no. 7 about jurisdiction of the Court to hear the suit was also decided in favour of the plaintiff. In the result the suit was decreed.

In appeal by the private defendants, the Revenue Appellate Authority vide judgment dt. 12.9.1983, Annexure-11, reversed the judgment. It was found, that material issues are issues no. 1, 5 and 7. Then, regarding issue no.1 it was held, that in Ex.6 the name of Ram Pratap appears in Samvat 2009, while in Girdawari of Samvat 2007 to 2011 the land was entered as Khud Kasht of Binja, and Ram Pratap's name has been subsequently added, as in column no. 12, 15, 18 and 22 cross has been put. Then, in Samvat 2010 there is no cultivation, then in Samvat 2011 and 2012 also there is no cultivation. Thus, it was found that in the Girdawari 31 Bighas of land is shown to be of Ram

Pratap, so as to lay a claim of allotment, while it is not clear as to how the land could be in plaintiff's possession and cultivation. Then, in Jamabandi of 2014 and 2015 Ram Pratap is shown to be a cultivator on 41 Bigha 7 Biswa of land, while in Girdawari it is 31 Bighas, and son could not be sub tenant of father, as shown in Jamabandi. Then, it was found, that from Girdawari of 2007 to 2012 it was clear that the land was given on lease to plaintiff's father under Bikaner Tenancy Act, and that on commencement of Rajasthan Colonisation (Bhakra Project Government Lands Allotment and Sale) Rules, 1956, such lease has automatically came to an end, and vested in the State Government. Then, it was found that Khatedari rights could not accrue under Section 15 and Section 19 of the Rajasthan Tenancy Act, in view of the provisions of Colonisation Act. Thus, it was found that the plaintiff is not entitled to any declaration. Then, it was held that the plaintiff himself has admitted, that he moved application before competent authority for allotment, which application has been dismissed. Thus, no Khatedari rights accrue under Section 15 of the Rajasthan Tenancy Act. Some judgments of Board of Revenue were also considered. Consequently, issues no. 1, 5 and 7 were decided against the plaintiff. Then, regarding question of res-judicata, it was considered that since the matter of allotment to the petitioner has been decided by competent authority, and that order has become final, and the parties are bound by the decision of the Dy.

Commissioner Colonisation, and bars the plaintiff from maintaining the present suit.

Against this judgment again an appeal was filed before the Board of Revenue by the plaintiff, which has been dismissed vide judgment Annexure-14. The learned Board of Revenue found, that the Revenue Appellate Authority has carefully considered the document, and came to the conclusion, that the name of Ram Pratap has been interpolated, and has given reasons for coming to this conclusion. Then, the Revenue Board has also found, that the plaintiff lays his claim on the basis of old possession, but then possessory title is unknown to revenue law, therefore, also the judgment of Revenue Appellate Authority was upheld. Then, the contention of the plaintiff was noticed, and it was found, that there is of course omission to pass a formal order on the application under order 41 rule 27 C.P.C., and that the judgment produced, could not be taken into consideration, and has held that even if that judgment is ignored, the judgment of the appeal remains the same.

Arguing the writ petition, reliance was placed on the judgment of Privy Council, in Lala Hem Chand Vs. Lala Pearey Lal, reported in AIR 1942 Privy Council-64, Nair Service Society Ltd. Vs. K.C. Alexander, reported in AIR 1968-1165, State of West Bengal Vs. The Dalhousie Institute

Society, reported in AIR 1970 SC-1778, and K.T. Huchegowda Vs. The Deputy Commissioner, reported in 1994 DNJ (SC)-174, to contend, that the learned Board of Revenue was in error in proceeding with the assumption, that possessory title is unknown to revenue law, rather in view of the provisions of Limitation Act, the petitioner can, and did, have title by adverse possession. Then referring to Section 63(iv) read with Section 183 B and Schedule-III of the Rajasthan Tenancy Act, it was contended, that on expiry of period of limitation, the right of the persons got extinct, and therefore, the judgment of the Board of Revenue requires to be set aside. Then, arguing on facts learned counsel submitted, that it is clearly established on record, that the petitioner is continuing in possession, and his possession was recognised right upto this Court in the proceedings under Section 145, and since he is in possession since Samvat 1990 through his ancestors, and in any case he himself is in possession since Samvat 2007-2008, he has perfected his title, and therefore, the suit was required to be decreed. The other limb of argument made was, that since the date of allotment of land to the private respondents also period of more than 12 years has expired, and since the petitioner is in continuous possession, against them also the petitioner has perfected his title by adverse possession, and this was a precise claim laid by the plaintiff, and therefore, the findings recorded by the learned Board of Revenue, and the learned

Revenue Appellate Authority are liable to be set aside. It is also contended, that may be that the plaintiff's application for allotment was rejected, but then after passing of the order Annexure-4, the petitioner also never claimed or cared to acquire possession of the land, which was in possession of the petitioner openly, peacefully, and within knowledge of the defendants, and since more than 12 years have expired right of the private respondents to get possession from the petitioner has got extinguished, on account of the provisions of Section 63(iv) referred to above, and therefore, the impugned decrees of the two learned courts below are liable to be set aside, and that of the learned trial court deserves to be restored.

On the other hand, it is contended that since admittedly the plaintiff applied for allotment of land in question to him, which application has been considered, and rejected, against which rejection he filed an appeal which appeal has also been dismissed way back in 1961, and no further remedy having been availed against that order, the present suit is wholly misconceived. It was also submitted, that the plaintiff petitioner is trying to confuse the issue, and is claiming possession, while as a matter of fact he is not at all in possession, and even in 145 proceedings the possession was with the respondents. Then, referring to Annexure-2 it was submitted, that this Court while dismissing the writ petition of the petitioner has

clearly found, that the action of dispossession taken on 27.4.76, challenged by the writ petition being No. 1291/76, was correct, and that writ was dismissed vide Annexure-2 dt. 6.9.78. Then, it was submitted that a look at Annexure-5 shows, that this order was obtained from the Revenue Appellate Authority by showing the interim order of the High Court dt. 3.7.76, which by then had lost its force by way of Annexure-2, apart from the fact that the petitioner had not disclosed, as to what were the orders of Tehsildar dt. 8.9.1977, and that of the Addl. Collector (Administration) Sri Ganganagar dt. 30.10.81. Thus, it was contended that the petitioner is playing the game of hide and seek with the authorities in different hierarchy, and despite being not in possession, is trying to paint the picture about his being in continuous possession, and is invoking wholly unwarranted sympathy of this Court. Then, it was also submitted that in any case since the suit was filed on 12.10.78 in any case the petitioner's adverse possession could not mature against the State, the defendant no.3, as 30 years had not expired since the rejection of the petitioner's application for allotment, and therefore, the plea of adverse possession is not available.

I have considered the submissions, and have gone through the documents available on record.

In my view, of course, the plaintiff has come with a case of being in continuous and peaceful possession since Samvat 1990, and has filed the suit on the basis of adverse possession, but then a bare look at plaint itself shows, that the plaintiff has not claimed his possession since 1990 to be adverse. Then, admittedly the plaintiff did apply for allotment of land in question to him. This obviously means, that by that date the plaintiff acknowledged the title of the State, and did not claim to be in possession, adverse to the State. Otherwise by the time when the application was filed, 30 years had already expired, and the plaintiff could have initiated litigation for declaration of his title, instead of applying for allotment. Thus, till filing of the application for allotment, and its rejection finally, the possession of the petitioner cannot be said to have become adverse to the State. That being the position, I need not go into the question, as to whether the possessory title is unknown or known to the revenue law.

This being the position, the various judgments cited by the learned counsel for the petitioner need not detain me, as the legal proposition propounded therein does not arise in the facts and circumstances of the present case.

In view of what has been found above, since the

petitioner did not perfect title by adverse possession against the State, the mere fact, that the other allottee could not take possession from him in more than 12 years, is also of no significance in the present case, as the declaration prayed for in the suit is, of the plaintiff's Khatedari rights, though other declarations have also been claimed, and since the petitioner cannot be said to have acquired Khatedari rights, this declaration cannot be granted, and has rightly been refused.

So far as the petitioner's entitlement to get allotment is concerned, once that application has been rejected, and appeal there against has also been rejected, way back in the year 1961, as pleaded in para-2 of the written statement, which fact has not been controverted, a suit filed in the year 1978 to claim to be entitled to the allotment, obviously notwithstanding the fact of the rejection earlier, cannot be said to be maintainable.

Then, so far as the allotment made in favour of private respondents is concerned, admittedly allotment has been made, and that has not been challenged by the petitioner before authorities higher in hierarchy, and therefore, the petitioner is not entitled to declaration, in that regard either, apart from the fact, that nothing has been argued before me in this regard, to show, as to how the allotment in favour of respondents no. 1 and 2 is

null and void etc.

Then, so far the relief for injunction is concerned, obviously since the petitioner did not perfect his Khatedari rights, the state is always entitled to dispossess the petitioner, and may do whatever, with the land, as may be entitled to do, in which the petitioner has no say.

The net result of the above discussion is, that the writ is devoid of merit, and is dismissed. The parties shall bear their own costs.

(N.P.GUPTA), J.

/Sushil/